

September 8, 2008

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
SEPTEMBER 8, 2008

MEMBERS PRESENT: KATHLEEN LOCEY, ACTING CHAIRMAN
FRANCIS BEDETTI, JR.
PAT TORPEY
JAMES DITTBRENNER

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN

MICHAEL BABCOCK
BUILDING INSPECTOR

REGULAR_MEETING

MS. LOCEY: I'd like to call to order the September 8,
2008 meeting of the New Windsor Zoning Board of
Appeals.

APPROVAL_OF_MINUTES_DATED_AUGUST_25,_2008

MS. LOCEY: I'll accept a motion to accept the minutes
of the August 25, 2008 meeting as written.

MR. DITTBRENNER: So moved.

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MR. TORPEY: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

PRELIMINARY_MEETINGS:

CAR_CARE_BY_C_&_N_(08-29)

MS. LOCEY: For those of you who haven't been here in front of the Zoning Board of Appeals before, we have a two phase procedure. The first phase for all new applicants is a preliminary meeting where we ask you to come in front of the board and ask or advise the board just what it is you're looking for and we can advise you of what you will need to accomplish or need to submit to the board in order to hopefully receive whatever variances you're looking for. The second phase is a public hearing where you'd come back and make your presentation and the audience would be given the opportunity to speak either for or against each application before a formal decision by this board is made. So with that in mind, we have two preliminary meetings scheduled for this evening. The first is an application of Car Care & C & N requesting a use variance.

Mr. Anthony Coppola appeared before the board for this proposal.

MR. COPPOLA: My name is A. J. Coppola, I'm the architect who prepared the plans. I'm here representing Car Care, it's an existing automobile service business at 601 Little Britain Road and I'm here tonight with the owner, Mr. Carlos Mira. And what I will do is I will explain what we're proposing, what's there now, what we're hoping to do and then myself and Carlos would both be available for any questions the board has about the architecture and/or about the business. So basically what we have is at 601 Little Britain Road it's a triangular parcel, it's a little over an acre, about 50,000 square feet and what's there now is basically a long entrance drive with parking on the left side, that entrance drive leads to the rear where the existing automobile service

business is in the back here of this property and that existing building is about 2,500 square feet. It contains basically a small office, a small retail area right here, two existing smaller garage bays and that's all in an existing one story building. In the front of the property is on the same parcel is a single family home and that's where Carlos lives with his family, it's all in the same parcel. There's a separate driveway off Little Britain Road and a separate parking area that serves the house. And one of the things we hope to do is basically separate the house from the commercial business with basically a visual barrier, a stockade fence even though it's still on the same parcel of land. What we're proposing to do is basically create a single story addition to the rear into the rear yard and that will basically enable Carlos and the business to service larger vehicles. This new service garage would be attached to the existing one, the overhead doors will be wider, the lift would be taller and those are things that he cannot do in his existing business right now, just because of the size and the constraints of the doors and then maneuvering around the vehicles so this is something that's really needed for the continual operation of the existing business. And that basically causes a few variance requests for area variance on the side yard here, the existing, the existing corner of the existing building is 5 foot 7 inches, we would be coming no closer than that 8 foot where the existing building is skewed to the lot line so we would be 8 foot and 12 foot 3 which is further than what's existing but not in conformance with the side yard setback is 15 feet, yes, so that may be one variance. There is a development coverage which we cannot come close to, it's required to be 85 percent, existing is 40 percent, what we're proposing because of this addition is 44 percent so there's the area variances for the yards, I think there's a rear yard setback here too, I'm not sure how that's calculated with the triangle, the developmental coverage and lastly what

we're looking to do as part of the existing business which Carlos purchased in 2003?

MR. MIRA: 2004.

MR. COPPOLA: Almost five years ago, this existing business was selling cars there which is not something that's allowable in the zone. And that's something that Carlos continues to do and as part of this business and therefore we're asking for a use variance in addition to the area variances that I outlined so there would be a small automobile display area right up front, we have only designated 7 spaces for that, that's kind of a natural by-product of this existing automobile service garage which is allowable. So that being said, I can answer any questions or if you have questions about the business and the operation of the business Carlos I'm sure would be able to answer that.

MS. LOCEY: Am I correct in understanding that the time the current owner purchased the property, the prior owner was selling vehicles and he, the current owner continues to do so?

MR. MIRA: Excuse me, yeah, the woman when I purchased the property it was a misunderstanding for me, I thought I had the right C.O. and yeah he was selling a few cars because I spoke to the gentleman.

MS. LOCEY: You have continued that and you're looking for a variance to make that a more or less legal operation?

MR. MIRA: Correct.

MR. TORPEY: They have been selling cars there for 15, 20 years.

MR. DITTBRENNER: Yes, the original owner he always sold vehicles out of there.

MS. LOCEY: Can you kind of explain the requirements, what it is the applicant needs to prove in order to secure a use variance?

MR. KRIEGER: Yes, a use variance as outlined the requirements are outlined in the Town Law New York State Town Law, not the town's law, New York State town's law, that's correct, he's required to show four things. One, that the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. Two, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Three, that the requested use variance if granted will not alter the essential character of the neighborhood. And four, that the alleged hardship has not been self-created. These are criteria set forth not as I say not in our town's law but in the state law more or less handed to us by Albany. So it is required for a use variance that an applicant meet all four criteria so they should be connecting with each of the four.

MS. LOCEY: This is a pre-existing use which is just trying to--

MR. KRIEGER: Well then that raises the question as to whether he needs a variance or whether he's looking to expand that pre-existing use. He'd have to establish that the use predated, goes back continuously predates zoning. If he can demonstrate that then he does not need to meet the four criteria because he has a continuous use which predates zoning which sounds, and it sounds from the evidence here like this is a possibility.

MR. COPPOLA: Well, I don't think, I think we know that the C.O., I mean, as far as the building department

goes the C.O. does not reference automobile sales.

MR. MIRA: Yeah, that's correct, I thought it was but I was mistaken.

MR. KRIEGER: If the applicant can show as a matter of fact notwithstanding that as a matter of fact that there were in fact car auto sales done to pre-exist zoning the existence, the mention or lack thereof in a C.O. is not dispositive of that question.

MR. TORPEY: That building is under the grandfather clause isn't it?

MR. KRIEGER: If they can show that it was continuously used for that purpose, the purpose of selling, again, I'm addressing myself to the use and not the area.

MR. TORPEY: How long has the building been there, how long has the business been there?

MR. KRIEGER: I don't know, these are factual questions, I'm just outlining what the applicant's alternatives are.

MS. LOCEY: If a letter were submitted signed by the previous owner indicating he or she owned that business since whatever date and throughout that period of time.

MR. KRIEGER: I believe it's January 1, '66 is when it came into being. There have been other applications, yes, that have where an applicant has produced by evidence satisfactory to the zoning board that it has been a continuous use and they have done so by letter or by affidavit in some instances and that has been acceptable to the Zoning Board of Appeals because each property is unique in the eyes of the law unlike any other property. For that reason, a variance request for a particular piece of property are unique as well.

MR. TORPEY: Because he's in a PI zone.

MR. KRIEGER: Well, doesn't have to do with the zone, has to do with the piece of property being unique. If they are, so the question is if evidence is submitted, is it satisfactory to this board for this piece of property, whatever past boards may or may not have done with respect to other properties is not the question.

MS. LOCEY: Okay.

MR. COPPOLA: So we'll look to see what we can do to produce that.

MS. LOCEY: Otherwise our hands are tied as far as the applicant having to prove whatever criteria are set forth by the State of New York not by the Town of New Windsor and that's very difficult.

MR. COPPOLA: It's a higher threshold.

MR. TORPEY: This is for the car sales only.

MR. KRIEGER: Car sales only. I was addressing myself to the use variance, not the area variances, that's a completely separate thing.

MS. LOCEY: But if he can trace the lineage back to 1966 and get some kind of documentation that there have been continuous sales of cars throughout that period of time I think that would be a lot easier for him to prove than to prove the four steps for a use variance.

MR. COPPOLA: Well, okay, so I understand.

MR. KRIEGER: I know in the past with respect to use variances applicants have produced letters or affidavits from some older person who's been around continuously since then and observed the property and that has been, they had no part in it, simply observed

the property and that has been satisfactory to prior boards. Again, I say that fact does not apply to this board to find any particular piece of evidence unsatisfactory, I only mention that to give some guidance.

MR. COPPOLA: We understand.

MS. LOCEY: Okay, and the second part of your application or the required variances to construct the addition to the repair service garage, is that correct, you need an area variance, side yard setback and developmental coverage?

MR. COPPOLA: I don't have the letter in front of me but if my information is correct well the side yard setback that's, we're not coming any closer than what's there so that's really--

MS. LOCEY: Just doesn't meet current zoning.

MR. COPPOLA: Right, development coverage, this is a definite but, I mean, I was told by the planning board engineer that for whatever reason that's extremely written unreasonably high in the ordinance, 85 percent, I mean, I've been here several times for that on other properties. So it's definitely development coverage. We know the front yard setback, again, I don't know if that matters, it's the 50 foot setback cuts into the house, we're not doing anything to the house but we made note of everything, so I don't have the letter in front of me, I don't quite remember what actually was put in there in the referral.

MR. KRIEGER: Under the theory as long as you're here you might as well list everything.

MR. COPPOLA: Yeah, we put all those items in there.

MR. DITTBRENNER: Should this be revised?

MS. LOCEY: Well, the agenda is too general for the various items that they need variances for.

MS. MASON: Disapproval was only for those items I think cause it's all non-conforming, pre-existing non-conforming.

MS. LOCEY: Use variance, also a variance is required since the proposed additions to the repair facility exceed the maximum 30 percent expansion of the non-conforming use so he's not, he doesn't need the area variance.

MS. MASON: Only for coverage according to this.

MS. LOCEY: Okay.

MR. COPPOLA: Vehicle repair is non-conforming?

MS. LOCEY: Pre-existing non-conforming vehicle repair.

MR. COPPOLA: That's not a use variance, that part of it does not, that's just an expansion of the existing.

MR. KRIEGER: Apparently from the paperwork it appears that they have recognized that it is pre-existing non-conforming use status and their only objection is to the town's only objection appears to be to the more than 30 percent expansion.

MR. COPPOLA: Okay.

MS. LOCEY: All right, so then would the building of any addition do we need to be concerned about drainage and vegetation coming down and easements and that sort of thing? Do they still have to go through that?

MR. KRIEGER: Well, those are normal questions, yes. The answer to each question of which is in no case by

itself dispositive of the questions, merely for the information, these are items of information that, standard items of information that board members have desired in the past in order to assist them to make a decision.

MS. LOCEY: Okay, does anybody else have any questions? I'll accept a motion.

MR. DITTBRENNER: I would move that we approve the request to go to a public hearing for Car Care by C & N for a use variance on the property as well as a variance required for a greater than 30 percent expansion of the existing property.

MR. TORPEY: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

RICHARD_JULIAN_(08-30)

MS. LOCEY: Next applicant for preliminary meeting for Richard Julian request for an 8.4 foot rear yard setback for a proposed 20 x 20 addition at 58 Hudson Drive in an R-4 zone.

Mr. Richard Julian appeared before the board for this proposal.

MS. LOCEY: Please state your name and address for the record.

MR. JULIAN: Richard Julian, 58 Hudson Drive.

MS. LOCEY: And do you want to just explain to the board what it is you want to do?

MR. JULIAN: Just 20 x 20 addition family room, that's pretty much it.

MS. LOCEY: And you have pictures of your house and an existing deck where would the addition go?

MR. JULIAN: Where the deck is that's coming off.

MS. LOCEY: You're going to replace the deck with an addition?

MR. JULIAN: Yes.

MS. LOCEY: From the pictures it doesn't appear to be but will you be cutting down any amount of trees or vegetation?

MR. JULIAN: No.

MS. LOCEY: Are there any easements on that portion of your property?

MR. JULIAN: No.

MS. LOCEY: And will it be causing any drainage or runoff problems?

MR. JULIAN: No.

MS. LOCEY: And with the proposed addition would your house remain in character with the rest of your neighborhood, similar to homes in the area?

MR. JULIAN: Actually, most of them have additions on.

MR. TORPEY: You're putting an addition on top of the deck?

MR. JULIAN: No.

MR. BEDETTI: Is there another house right behind you?

MR. JULIAN: No, nothing behind me, woods, in fact, almost all the houses have additions in the back of them on my side of the street.

MS. LOCEY: Does anybody else have any further questions? If not, I will call for a motion.

MR. TORPEY: I will make a motion that we schedule a public hearing for Richard Julian at 58 Hudson Drive for a proposed 20 x 20 addition.

MR. DITTBRENNER: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

PUBLIC_HEARINGS:

RALPH_RUIZ_(08-22)

MS. LOCEY: Request for 20 foot rear yard setback for a proposed 20 x 50 foot rear deck at 17 Barclay Road. And if you want to give our stenographer your name and your address.

MR. RUIZ: Ralph Ruiz, 17 Barclay Road, New Windsor, New York.

MS. LOCEY: Would you explain to the board just exactly what it is you're proposing to do?

MR. RUIZ: Just putting a rear deck on the house the full length of the house and 20 foot out.

MS. LOCEY: With the construction of the deck, will you be taking down any large number of trees or vegetation?

MR. RUIZ: No.

MS. LOCEY: Is there an easement on your property where that's proposed?

MR. RUIZ: No.

MS. LOCEY: Will you be creating any water or drainage problems?

MR. RUIZ: No.

MS. LOCEY: And are there other, are the homes, the other homes in your neighborhood do they have decks comparable to the one you're proposing to put up?

MR. RUIZ: Yes.

MS. LOCEY: From the pictures am I correct in stating

that the deck is coming off of the second floor?

MR. RUIZ: That's correct.

MS. LOCEY: So without it it would create a health problem?

MR. RUIZ: Absolutely.

MR. KRIEGER: Person exiting the house would likely--

MR. RUIZ: I'm 8 feet.

MS. LOCEY: So it's a safety issue without your proposed deck?

MR. RUIZ: Absolutely.

MS. LOCEY: I have no further questions. Does anybody else have any?

MR. BEDETTI: I might of missed it, is this a ground level deck?

MR. RUIZ: No, it's eight foot high.

MR. BEDETTI: That's all.

MS. LOCEY: Did you have the picture?

MR. BEDETTI: Yeah, but I couldn't tell whether it was going to be ground level.

MS. LOCEY: If there are no further questions from the board, we'll open it up to the public to see if anyone is here for this particular application. And with no one here for it we'll close the public portion of the hearing and ask Myra if she had any mailings and if so how many?

MS. MASON: On the 25th of August, I mailed out 56 addressed envelopes and had no response.

MS. LOCEY: If there's no further discussion, I will call for a motion.

MR. DITTBRENNER: I move to approve a variance request for rear yard setback on proposed deck of 20 x 50 for Ralph Ruiz at 17 Barclay Road.

MR. BEDETTI: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

FRANCES_LEWIS_(08-26)

MS. LOCEY: Request for an 8 foot side yard setback for an existing garage at 4 Canterbury Lane in an R-3 zone. Please give your name for the record.

MRS. LEWIS: My name is Frances Lewis, 4 Canterbury Lane, New Windsor, New York 12553.

MS. LOCEY: And Frances, would you explain to the board why you need this variance or what it is about?

MRS. LEWIS: Yeah, we have a garage which is about 4, it should be 10 feet away from on the left-hand side of our neighbor it should be 10 feet so that's, it's 4 feet in place of 10 feet.

MS. LOCEY: Our records show it's only 2 feet from the property line.

MRS. LEWIS: Excuse me.

MS. LOCEY: How long has the garage been in existence?

MRS. LEWIS: About 40 years.

MS. LOCEY: Has anyone objected?

MRS. LEWIS: No, the one who was there isn't here tonight either and he should be the only one of concern because we have empty lots in the back and the side.

MS. LOCEY: So the neighbor who's closest to this garage has not voiced any concerns?

MRS. LEWIS: No, he doesn't, I spoke with him, he has no objections at all.

MS. LOCEY: Does anybody else on the board have any questions?

MR. DITTBRENNER: No.

MS. LOCEY: With that we'll open the public hearing and ask if there's anyone here to speak on this application? And since there's not, we'll close the public hearing and bring it back to the board. Does anyone else have any further questions or comments? If not, I'll accept a motion. I'm sorry, the mailings.

MS. MASON: On the 25th of August, we mailed out 39 addressed envelopes and had no response.

MS. LOCEY: And now I will call for a motion.

MR. BEDETTI: I will make a motion that we approve the request for variance for 8 foot side yard setback for existing garage at 4 Canterbury Lane in an R-3 zone as requested.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

KIMBERLY_VOLPE_(08-25)

MS. LOCEY: Request for a 14 foot 8 inch variance for a side yard setback for a proposed side deck extension at 238 Parkway Drive in an R-4 zone.

MRS. VOLPE: Good evening, my name is Kimberly Volpe, I live at 238 Parkway Drive. And the reason why I'm here tonight is that I need a variance for a 14 foot and 8 inch side yard setback on the right-hand side of my house for a wraparound porch.

MS. LOCEY: Will you be taking down any vegetation or substantial trees?

MRS. VOLPE: No.

MS. LOCEY: Any drainage or water runoff problems?

MRS. VOLPE: No.

MS. LOCEY: Are there any easements in that area?

MRS. VOLPE: No.

MS. LOCEY: Is your proposed deck in character with the rest of your neighborhood?

MRS. VOLPE: Yeah, as a matter of fact, I brought some pictures of my neighbors on both sides, left and right, and they both have some sort of porch or a little deck in the front.

MS. LOCEY: Anyone else from the board have any other questions? If not, we'll open it up to the public to see if there's anyone here who wants to speak on this particular application. If not, we'll close the public portion of the hearing and ask Myra if she had any results to any mailings?

MS. MASON: No. On August 25th, we mailed out 74 addressed envelopes and had no response.

MS. LOCEY: With that, I would accept a motion.

MR. DITTBRENNER: I move to approve a side yard setback variance of 14 feet 8 inches as proposed for a side deck extension to 238 Parkway Drive for Kim Volpe.

MR. TORPEY: I'll second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE

STEVEN_CATANIA_(08-19)

MS. LOCEY: Request for 9.1 foot rear yard setback for an existing shed at 19 Lannis Avenue in an R-4 zone.

MS. SCHELL: I'm Elizabeth Schell, I just bought the house.

MS. LOCEY: Just give us your name and address.

MS. SCHELL: Elizabeth Schell, 19 Lannis Avenue.

MS. LOCEY: And would you explain your application while you're here and what you need from the board?

MS. SCHELL: We need a variance for an existing shed that was on the property when we bought the house, it's within one foot of our neighbor's property line so I guess we need cause the 9.1 foot variance, is that what it is?

MS. LOCEY: Yeah, it's what it says here.

MS. LOCEY: And the shed was existing when you bought the property?

MS. SCHELL: It was existing when we bought it and there's a brick wall on the side and we have a pool on the other side and there's an existing well in front of it so we couldn't move the shed anywhere else and there's the hill so there's the well and then brick wall and the pool.

MS. LOCEY: Well, since the shed was already there when you purchased the property but do you notice any runoff or drainage issues?

MS. SCHELL: No.

MS. LOCEY: Any easements in that portion of your

property?

MS. SCHELL: No.

MS. LOCEY: Are there similar sheds in the neighborhood homes within your area?

MS. SCHELL: On the one side of us is woods so we don't see anything and I know that the gentleman who lives behind us does have a shed, it's up further.

MS. LOCEY: So you think it remains in the character with the neighborhood?

MS. SCHELL: Yes.

MS. LOCEY: Does anyone else have any questions? If not, we'll open it up to the public, we'll see if there's anyone here to speak on this particular application. Since there's not, we'll close the public portion of the meeting and we'll ask Myra how many mailings.

MS. MASON: On the 25th of August, I mailed out 49 addressed envelopes and had no response.

MS. LOCEY: Does anyone else have any further comments, questions, concerns? If not, I will ask for a motion.

MR. DITTBRENNER: I would move to approve a rear yard setback for an existing shed at 19 Lannis Avenue for the new owner of that property, Elizabeth Schell.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MR. TORPEY	AYE

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MS. LOCEY AYE

MS. LOCEY: Motion to adjourn?

MR. DITTBRENNER: So moved.

MR. BEDETTI: Second it.

ROLL CALL

MR. DITTBRENNER AYE

MR. BEDETTI AYE

MR. TORPEY AYE

MS. LOCEY AYE

Respectfully Submitted By:

Frances Roth
Stenographer

